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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 5th February 2025

S.R.O. No. 136/2025—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 31st December, 2024 passed in the I.D. Case No. 01 of 2014 by the Presiding Officer, Industrial Tribunal, Rourkela to whom the industrial dispute between the Management of M/s Shree Metalics Pvt. Ltd., At Anra, P.O. Raigoda, Dist. Keonjhar and Smt.Basanti Barik and 71 others, C/o Tanu Barik/Upendra Das, President/General Secretary of Radha Krushna Shramik Sangha, At. Anra, P.O. Raigoda, Dist. Keonjhar was referred for adjudication is hereby published in the schedule below:

SCHEDULE

BEFORE THE INDUSTRIAL TRIBUNAL, ROURKELA

INDUSTRIAL DISPUTE CASE NO. 01 of 2014

Dated the 31st December 2024

Present :

Shri Benudhar Patra, B.Sc. LL.M.,
Presiding Officer,
Industrial Tribunal,
Rourkela.

Between :

The Management of
M/s Shree Metalics Pvt.Ltd.,
At Anra, P.O.Raigoda,
Dist. Keonjhar. . . First Party—Management

And

Smt.Basanti Barik and 71 others,
C/o Tanu Barik/Upendra Das,
President/General Secretary of
Radha Krushna Shramik Sangha,
At Anra, P.O.Raigoda,
Dist. Keonjhar. . . Second Party—Workmen

Appearances :

Shri R.P. Patnaik, Advocate	. .	For the First Party Management
Shri Sanatan Biswal, Advocate	. .	For the Second Party Workmen

AWARD

The Government of Odisha, Labour & E.S.I. Department, in exercise of powers conferred by sub-section (5) of Section 12 read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') have referred the following dispute for adjudication vide Order No. IR(ID) 55/2013-2164/LESI, dated the 6th March 2014 :—

SCHEDULE

"Whether the termination of services of Smt.Basanti Barik & 71 others workmen (as per list) with effect from dated the 2nd April 2013 by the Management of M/s Shree Metalicks Ltd., At Anra, P.O. Raigoda, Dist. Keonjhar is legal and/or justified ? If not, what relief the workmen are entitled to ?"

2. The case of the second party workmen, as it appears from the statement of claim, is that the 1st "party management is an establishment registered under the Factories Act and is an "Industry" as defined in Section 2(j) of the Act and so also each one of the disputants is a "workman" within the meaning of Section 2(s) of the Act. It is stated that while the 2nd party workmen were discharging their duties with utmost sincerity and honesty all of a sudden on the 2nd April 2013, the 1st "party management illegally refused them employment without any prior notice and without assigning any reason. It has also been pleaded that none of the disputants was ever charge sheeted nor any domestic enquiry was conducted against them. Soon after their termination from service they approached their superior officers ventilating their grievance but the same was not heeded to. Specifically, it is averred that at the time of effecting the termination they were neither given one month's notice nor notice pay in lieu thereof and retrenchment compensation. According to the 2nd party workmen, taking the advantage of their poor financial condition the 1st party management thrown them out of employment without following the basic principles of natural justice. In the above background, the 2nd party workmen have asserted that their termination from service with effect from dated the 2nd April 2013 is neither legal nor justified and prayed for their reinstatement with full back wages and all other consequential benefits.

3. The first party management, on the other hand, contesting the 'lis' has taken a stand in its written statement that the case is not maintainable as the 2nd party workmen have not disclosed their personal identity and so also their address details. Categorically it is stated in the written statement that the first party being a registered company under the Companies Act, 1956 it started construction activities for establishment of a manufacturing Plant i.e. Pellet Plant at Village Anra and while taking up the activities it was decided that the management will engage unskilled construction labourers on day to day requirement/weekly basis and for that the management used to pay wages to the casual labourers and even the intruders although they were never employed or engaged in the project site of the management. Further assertion of the first party is that before completion of contractual period, the construction was completed for which the management was compelled to pay idle wages to the casual labourers for the period from January 2013 to March'2013. According to the first party, the first party besides being not an 'industry' and the dispute raised is not an 'Industrial Dispute', the termination of the 2nd party workmen is also not covered within the definition of 'termination' as given under Section 2(oo) of the Act as because the work for which the labourers were employed had come to an end on completion of contract work awarded in favour of the first party.

4. In the rejoinder, the second party workmen have reiterated their stand taken in the claim statement and have stated further that the 1st party management being their employer is well aware about the identity of its workmen and their addresses and that they were never employed under the first party as Contractual/Casual Workers or construction labourers, nor were engaged for any fixed term, rather they were working continuously for about 5 years prior to their retrenchment in 2013.

5. On the aforesaid analysis, following issues have been framed for adjudication on the following question:

(i) Whether the reference is maintainable ?

(ii) Whether the termination of services of Smt.Basanti Barik & 71 others workmen (as per list) with effect from dated the 2nd April 2013 by the management of M/s Shree Metalicks Ltd., At Anra, P.O. Raigada, Dist. Keonjhar is legal and/or justified ?

(iii) If not, what relief the workmen are entitled to ?

6. In course of hearing, the 2nd party-workman examined himself as WW 1 and relied on documents marked as Ext.1 and Ext. 2. On the other hand, one witness was examined from the side of the 1st party management as M.W.1 who tendered documents marked as Ext. A to Ext. L.

FINDINGS

7. *Issue No. (i)*— The maintainability of the reference is challenged by the management on the ground that its establishment is not an 'Industry' and that the dispute referred for adjudication is not an 'Industrial Dispute' within the meaning of the Act. In the context, a reference may be made to the Chief Examination of WW 1, wherein she has stated that the first party management is an establishment registered under the Factories Act, which is having a systematic activity carried on by co-operation between itself and its workmen for the purpose of production of sponge iron and allied materials, selling and providing after sale service of the said products to its customers with a view to satisfy human wants and thus is an 'Industry' within the meaning of Section 2(j) of the Act and so also each of the second party member is a 'workman' within the meaning of Section 2 (s) of the Act. The evidence on this score adduced by WW 1 seems not to have been controverted in any manner although she has been put to cross-examination by the management. Further, on scrutiny of the failure report attached to the order of reference clearly discloses that the fact of termination of employment of the second party members has been admitted by the authorised representative of the management before the Conciliation Officer, which per se gave rise to the dispute in hand. Hence, the grievance of the second party members is squarely covered within the definition of Section 2(k) of the Act. So, viewing the objection of the management from any angle, the case is held to be maintainable.

8. *Issue No. (ii)*— It is contended on behalf of the management that as the cessation of employment of the second party members, who were temporary workers, was occurred due to non-renewal of the contract, it attracts the provisions of Section 2(oo) (bb) of the Act and therefore, the claim advanced on this score by the members of the second party that they have all been terminated from service is bound to fail. On close scrutiny of the record, it is found that the management in order to substantiate its plea has adduced evidence through its witness Shri Braja Kishore Mohanty, the AGM(Finance). Though at Para. 4 of his evidence in chief he has stated that there was no requirement of man-force after completion of the project, yet no document to that effect is produced indicating engagement of the members of the second party as against any project, nor copy of any such contract is produced indicating the duration of employment of the

second party members to work in such project. In the context, it is worthwhile to refer to the legal dictum of the Hon'ble Apex Court in the case of S.M. Nilajkar *Vs*. Telecom District Manager [(2003) 4 SCC 27, wherein their Lordships have held as follows :—

> "The engagement of a workman as a daily wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or up to the occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complain that by the act of employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the above said ingredients so as to attract the applicability of sub-clause (bb) above said. xx xx xx."

9. In the case in hand, there is no iota of evidence that the members of the second party were made aware on the date of their commencement of employment itself that their employment was short-lived and as per the terms of the contract and the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. In view of the above, it is difficult on the part of this Tribunal to sustain the argument that it is a case of cessation of employment of the second party members on account of non-renewal of contract and thus it is not covered under the definition of Section 2(oo) of the Act.

10. Next, it is to be seen as to whether the second party workmen are able to establish that they had all rendered continuous service for more than a period of 240 days prior to their alleged refusal of employment so as to get the relief (s) as claimed.

In the context, it is pertinent to note that in order to claim protection of the provisions of Section 25-F of the Act, the burden is on the disputant-workmen to establish that all of them had rendered continuous service for more than 240 days preceding the date of their termination to get the relief(s). Though Section 25-F of the ID Act is plainly intended to give relief to retrenched workmen, yet the qualification for relief under Section 25-F is that he should be a workmen employed in an industry and has been in continuous service for not less that one year under an employer. What is continuous service has been defined and explained in Section 25-B of the ID Act. In the present case, the provision which is of relevance is Section 25-B(2)(a)(ii) which provides that a workman who is not in continuous service for a period of one year shall be deemed to be in continuous service for a period of one year if the workman during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. In the context, a reference may be made to the case of R.M. Yellatti *v.* The Asst. Executive Engineer (JT 2005 (9) SC 340), wherein their Lordships of the Hon'ble Apex Court have held as follows:—

> "Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is

discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. xxxxxx."

In the case in hand, though it is the consistent stand of the disputants as well as the evidence of WW 1 that they all have rendered continuous service from their respective date of joining till refusal of their employment i.e. till dated the 2nd April 2013, yet they are required to establish the fact of their continuous employment under their employer at least for a period of more than 240 days preceding the date of their alleged refusal of employment so as to construe the same as termination of their service and to examine the compliance part of the provisions of Section 25-F of the ID Act. "Continuous Service" being a condition precedent to set into motion the provisions of Section 25-F of the Act, unless the same is proved the retrenchment in question cannot be looked into. One Basanti Barik has been examined to be the sole witness on behalf of all the disputants, who stated in her evidence that all the members of the second party including herself had joined the first party management as unskilled workers on different dates as mentioned in the list attached to the order of reference and that all of them have worked continuously without any interruption till they were refused employment by the management on dated the 2nd April 2013. She also gave out that during tenure of their employment they were never served with any charge sheet nor any domestic enquiry was ever conducted against anyone of them, nor they were proceeded with any disciplinary action at any point of time. According to her, their refusal of employment amounts to termination of their services and the same is illegal as well as unjustified owing to non-compliance of the mandatory provisions of Section 25-F of the Act. WW 1 has filed and proved only her monthly Attendance Card for the month of April, 2009 and the pay slip for the month of June 2012, which have been marked as Exts.1 and 2, respectively. No other documents except Exts.1 and 2 are produced on behalf of the disputants which could have thrown light on their continuous engagement, particularly when the management despite admitting their engagement has taken a stand that such engagement was need-based. Even the disputant Basanti Barik has not furnished sufficient document wherefrom a presumption can be drawn that she has rendered continuous service for a period of more than 240 days while in employment of the management. In absence of any documentary evidence substantiating continuous service of the second party members under the management, the Tribunal is not in a position to hold that the refusal of employment of the second party members is in gross violation of the provisions of Section 25-F of the Act. The second party members having failed to discharge the burden of proving their continuous engagement under the management for a period of more than 240 days, their refusal of employment w.e.f. the 2nd April 2013 can in no way be termed to be a retrenchment requiring compliance of the mandatory provisions of the Act.

It has been contended by the learned counsel representing the disputants that in view of the testimony of MW 1 during his cross-examination that the disputants were engaged under the management w.e.f. the January 2010 as casual workers and were getting wages from the HR Department of the Company, the disputants are no more required to prove their continuous service under the management and as such their refusal is nothing but termination of their employment. True it is that there is an admission of the management through its witness MW1 to the effect that the disputants were employed under the management w.e.f. the January 2010, but basing on such admission it is difficult to arrive at a conclusion that their engagement was continuous one so as to treat the refusal of their employment to be termination attracting the provisions of Section 25-F of the Act. No documentary evidence is adduced on behalf of the disputants showing their continuous engagement under the management. Hence, the contentions raised in this regard is of no help to the disputants.

The Issue No. (ii) is answered accordingly.

11. *Issue No. (iii)*:— Now, coming to the question of relief to which the second party members are entitled, the contesting management in the dispute has again laid much stress on the maintainability of the reference and in order to prove such aspect has brought on record some developments that have taken place in between. It is stated in a show cause that the State Government on suspension of several mining leases due to change in the mining policy, there occurred shortage of raw materials since 2012 for which the production activities were seriously hampered and a result thereof the financial creditors initiated proceedings for recovery of their outstanding dues by disposal of fixed assets of the company under SARFAESI Act. So the Managing Director of the Company took shelter of the BIFR (Board for Industrial and Financial Reconstruction) for reliefs. At last the Company was permitted to be registered under Section 51 of Sick Industrial Companies Act (Special Provision Act, 1985) vide their orders dated the 18th November 2014. As per Section 23(1) of Insolvency Code, 2016 Resolution Professional was appointed to conduct insolvency process and manage the operations of the 1st party Company as Corporate Debtor. The 1st party management lost all control over the affairs of the company because the control and management of the Directors were taken over by the Interim Resolution Professional who managed the affairs of the Company. During the procceding one public announcement was made in From-A by the Insolvency Professionals inviting all financial creditors for submission of their claim and the operational creditors including workmen and employees were invited to submit their claim and to that effect a public announcement was made and pursuant to such announcement several more financial creditors as well as operational creditors including workmen and employees submitted their claim, but the 2nd party members not being regarded as regular employees of the 1st party management did not file any claim before NCLT. According to the contesting management, if a proceeding against a Company is initiated under I.B.C. before the NCLT, the power and function of the Directors and Promoters were seized and thus, the present case is not maintainable in the Forum. The management, in the aforesaid background, prays to reject the claim as laid on behalf of the second party members.

The contesting management in support of the above has examined MW1 and placed reliance on a bunch of documents marked Exts. A to L, but in view of the findings arrived at by this Tribunal on Issue No. ii, the discussion on the above aspect has lost its significance. Issue No. ii having been answered in the negative as against the second party members, they are not entitled to any relief in the present proceeding.

Dictated and corrected by me.

BENUDHAR PATRA
31-12-2024
Presiding Officer
Industrial Tribunal, Rourkela

BENUDHAR PATRA
31-12-2024
Presiding Officer
Industrial Tribunal, Rourkela

[No. 1277—LESI-IR-ID-0011/2025-LESI.]

By order of the Governor

MADHUMITA NAYAK

Additional Secretary to Government

Extract of orders passed by the Presiding Officer, Industrial Tribunal, Rourkela in I.D.Case No. 01 of 2014 (between the Management of Shree Metalics Pvt.Ltd., Keonjhar And Smt.Basanti Barik and 71 others, referred to by the Government in the Labour & E.S.I. Department vide Letter No. IR(ID)55/2013/2164, dated the 6th March 2014).

Xx xx xx xx xx xx xx

The record is put up before me, as in course of my holding court at Rourkela it has been pointed out that there is a typographical error in the last page of the Award, inasmuch as below the signature of the P.O. it is mentioned as Presiding Officer, Industrial Tribunal, Bhubaneswar instead of Presiding Officer, Industrial Tribunal, Rourkela.

On perusal of record in I.D. Case No.1 of 2014, it is found that the record relates to the file of the Presiding Officer, Industrial Tribunal, Rourkela and Award in the dispute has already been passed and sent to the Government vide this Office Letter No. 692, dated the 31st December 2024. On further perusal it appears that the office has rightly pointed out the typographical mistake in the Award, which needs correction at this end. Rule 29 of the Orissa Industrial Dispute Rules, 1959, authorizes this Tribunal to correct any clerical mistake or error arising out of an accidental slip or omission in any Award it issues. In that view of the matter, the typographical mistake crept in the Award is corrected as Presiding Officer, Industrial Tribunal, Rourkela instead of Presiding Officer, Industrial Tribunal, Bhubaneswar.

Extract of this order be sent to the Labour & E.S.I. Department, Bhubaneswar for information and necessary action.

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